

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:08CR283
)	
Plaintiff,)	
)	
vs.)	AMENDED ORDER
)	
KAQUAN AMERSON,)	
)	
Defendant.)	

This matter is before the Court on the Defendant's motion for leave to file a notice of appeal out of time (Filing No. 63).

Defense counsel requests leave to file a notice of appeal out of time based on excusable neglect. The Defendant wishes to appeal the denial of his pretrial motion to dismiss. The Defendant's plea agreement states:

13. The Defendant hereby knowingly and expressly waives any and all rights to appeal the Defendant's conviction and sentence in this case, including a waiver of all motions, defenses, and objections which the Defendant could assert to the charges or to the Court's entry of Judgment against the Defendant, and including review pursuant to 18 U.S.C. § 3742 of any sentence imposed.

The Defendant further knowingly and expressly waives any and all rights to contest the Defendant's conviction and sentence in any post-conviction proceedings, including any proceedings under 28 U.S.C. § 2255, except:

(a) The right to timely challenge the Defendant's conviction and the sentence of the Court *should the Eighth Circuit Court of Appeals or the United States Supreme Court later find that the motion to dismiss should have been granted.*

(Filing No. 46 (emphasis added).)

In light of the italicized language added by hand to replace language deleted by interlineation, and the plea colloquy (Filing No. 50, at 8), the Court interprets the entirety

of ¶ 13 of the plea agreement as language evidencing a conditional plea agreement allowing for an appeal from the denial of the motion to dismiss.¹

The Court finds that the Defendant should be allowed an additional period of time to file a notice of appeal due to his counsel's excusable neglect.

IT IS ORDERED:

1. The Defendant's motion for leave to file a notice of appeal out of time (Filing No. 63) is granted; and
2. The Defendant must file a notice of appeal on or before May 8, 2009.

DATED this 24th day of April, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

¹Generally it would be noted in the first full paragraph of ¶ 13 that the plea is conditional.